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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Nevada)

Estate of IRENE CAROL RATTRAY,
Deceased.

FAWN BURNETTE,

Contestant and Appellant,

v.

RICHARD ROBERTS,

Objector and Respondent.

C043291

(Super. Ct. No.
P13516)

This is an appeal from an order made after a will contest. The trial court rejected appellant Fawn Burnette's attempt to invalidate the will of Irene Rattray and found in favor of the proponent of the will, respondent Richard Roberts.

In her brief, Burnette challenges the ultimate ruling in Roberts's favor. Her argument can only be construed as a claim that the order is not supported by the evidence. However,

because she has not produced a reporter's transcript of the proceedings, we must conclusively presume to the contrary. We shall therefore affirm.

BACKGROUND

Irene Carol Rattray (decedent) died on October 22, 2001. Burnette, decedent's granddaughter, filed a petition for letters of administration asking to be appointed administrator of her grandmother's estate. The petition acknowledged there was a "purported will dated 11/11/92" but alleged the will was void as procured by fraud and undue influence.

Roberts filed an objection to the petition, stating that decedent did not die intestate, but had executed a valid will before her death. The will, dated November 11, 1992, was attached as an exhibit.

The matter was tried as a will contest by the court, sitting without a jury. Following the presentation of evidence and witnesses, the court issued an "Order After Hearing" making the following three findings: "1. Objection of Richard Roberts is sustained. [¶] 2. Petition of Fawn Burnette is denied. [¶] 3. The court finds that the will of Irene Carol Rattray dated November 11, 1992 is valid."

Burnette appealed from this order. The parties stipulated that the original superior court file could serve as the clerk's transcript, pursuant to California Rules of Court, rule 5.2 (rules).) However, Burnette took no steps, other than the stipulation, to produce a record on appeal.

APPEAL

Burnette's brief can only be characterized as a broadside attack on the sufficiency of the evidence to support the trial court's order upholding decedent's will. Her argument on this point concludes: "The 1992 trust and pour over will was not the natural result of the uncontrolled will of Mrs. Rattray, the testatrix, but rather, that of Mr. Roberts, the person exercising the undue influence over her."

However, we are unable to evaluate the merits of her contention because no reporter's transcript of the trial proceedings has been included in the record on appeal.

An appellant has the burden of affirmatively demonstrating error by providing the reviewing court with an adequate record (Rule 5(a); *Scala v. Jerry Witt & Sons* (1970) 3 Cal.3d 359, 367, fn. 4.) "[T]he reviewing court presumes the judgment of the trial court is correct and indulges all presumptions to support a judgment on matters as to which the record is silent." (*Baker v. Children's Hospital Medical Center* (1989) 209 Cal.App.3d 1057, 1060; see 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 349, p. 394.)

Absent a reporter's transcript of the testimony and evidence adduced at trial, this court has no way of intelligently reviewing a challenge to the sufficiency of the evidence to support the lower court's order. This fatal gap in the record mandates rejection of Burnette's argument. (See *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.)

We affirm the order for a second, equally compelling reason. The argument portion of Burnette's brief, while containing numerous recitations of purported fact, fails to provide us with any *citations to the record* to support her factual assertions, as required by rule 14. On this basis alone, Burnette's claims may be disregarded. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 [substantial evidence claim dismissed summarily for lack of appropriate factual references to the record]; *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 796 [reviewing court may disregard evidentiary contentions unsupported by proper page cites to the record].)

DISPOSITION

The order appealed from is affirmed.

BLEASE, Acting P. J.

We concur:

RAYE, J.

ROBIE, J.